

Salt Lake County asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Lima's award of benefits to S. A. A. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

### **BACKGROUND AND ISSUE PRESENTED**

On January 9, 2003, Mr. A. filed an application to compel Salt Lake County to pay workers' compensation benefits for injuries Mr. A. suffered in a traffic accident on November 7, 2001. Judge Hann held an evidentiary hearing on Mr. A.'s claim on October 23, 2003, and referred the medical aspects of the claim to a medical panel. Judge Hann then resigned from the Commission and Judge Lima assumed responsibility in this matter. On February 22, 2005, after receiving the medical panel's report, Judge Lima issued her decision awarding benefits to Mr. A..

In its request for review of Judge Lima's decision, Salt Lake County argues that Mr. A. is not entitled to workers' compensation benefits because his injuries did not arise out of and in the course of his employment.

### **FINDINGS OF FACT**

At the time of his accident, Mr. A. was a lieutenant in the Salt Lake County Sheriff's Office, where he supervised the Detectives Division. He was on-call day and night, seven days a week, for investigation of homicides and other major crimes. Even when off-duty, he was required to respond to calls, as well as responding to crimes committed in his presence.

Salt Lake County has adopted a policy under which police vehicles were issued to Mr. A. and other law enforcement officers "for use in the performance of their duties." The County's policy allowed officers to use their County-owned vehicles for personal travel, subject to some restrictions discussed below. The County provided all fuel, maintenance and repair for the vehicles. In return, the County benefitted from increased numbers of officers on the streets, faster response and increased police visibility.

The County controlled officers' use of the County's vehicles in several ways. Officers were required to: 1) monitor the police radios in their vehicles and respond to law enforcement situations, whether on-duty or off-duty; 2) keep their cars clean, orderly and properly maintained; 3) carry firearms, police identification, a uniform, flashlight, citation book, and flares in the vehicle at all times. Officers were prohibited from: 1) using their vehicles for recreational or vacation trips; 2) driving their vehicles outside Salt Lake County without prior authorization; 3) using their vehicle if the officer or any passengers had consumed any alcohol within the previous six hours; 4) transporting alcohol, except for official business; 5) using the vehicle for any activities inconsistent with the officer's obligation to respond to emergencies; 6) allowing anyone other than a Sheriff's Office member to operate the vehicle; 7) dressing "in any way that could bring discredit to the

Sheriff's office, i.e. tank tops, reversed ball caps, earrings, day old beards, etc." While off-duty officers were permitted to have civilian passengers with them, they were not permitted to respond to police calls with such passengers in the car.

Mr. A. had actually used his County-owned vehicle several times during off-duty hours to engage in law enforcement activities such as traffic stops and officer back-up.

The accident that gives rise to Mr. A. current workers' compensation claim occurred as he and his wife were traveling to work in the County-owned police vehicle assigned to Mr. A.. Mr. A. intended to drop his wife at her place of employment and then drive to his own work locatoin. The vehicle in question had no external markings as a police vehicle, but was, nevertheless, fully equipped as a police car, with siren, radio and internal police lights. Mr. A. was operating the vehicle in compliance with all County requirements and restrictions. As a result of the accident, Mr. A. suffered the shoulder injuries for which he now seeks workers' compensation benefits.

### **DISCUSSION AND CONCLUSIONS OF LAW**

Section 34A-2-401(1) of the Utah Workers' Compensation Act provides medical and disability benefits to employees injured "by accident arising out of and in the course of employment." The question presented in this case is whether Mr. A.'s injury, which occurred as he and his wife were driving to work in a County-owned police car, arose out of and in the course of his employment. Salt Lake County argues that, under the "coming and going" rule, Mr. A.'s injuries did not arise out of and in the course of his work and are not compensable under the workers' compensation system.

As noted above, injuries are only compensable under the Workers' Compensation Act when they arise out of and in the course of employment. Whether an injury is work-related, and therefore compensable, depends on the specific facts of each case. As a general rule, injuries sustained while "coming and going" to work are not considered to arise out of and in the course of employment and are not compensable. *VanLeeuwen v. Industrial Commission*, 901 P.2d 281, 284 (Utah App. 1995). However, this "coming and going" rule is not absolute. Among its exceptions are situations where the employer provides transportation primarily for the employer's own benefit and exercises control over the use of that transportation. *VanLeeuwen* at 285. Consequently, in order for the Appeals Board to determine whether Mr. A.'s claim is barred by the "coming and going" rule, it is necessary to consider the degree to which Mr. A.'s travel was for the County's benefit and under the County's control.

In evaluating the benefits Salt Lake County received from Mr. A.'s travel in his County-owned police car, the Appeals Board notes that such travel was pursuant to a policy established by the County itself. It is undisputed that the County received substantial benefit from the policy as a result of greater law enforcement coverage throughout the County. Furthermore, the County exercised substantial control over vehicle use. Among other things, the officers were required to carry firearms, I.D. and a uniform, and other equipment. They were required to monitor and respond to calls and to engage in police action when feasible. All these obligations and restrictions applied to Mr. A. at the time of his accident.

The Appeals Board also notes Salt Lake County's argument that, because Mr. A.'s wife was in his County-owned vehicle at the time of the accident, he was precluded from taking police action and can not be considered in the course of his employment. However, the County's written policy explicitly permits law enforcement officers to transport passengers, subject only to the restriction that such passengers cannot be in the car when the officer responds to a law enforcement situation. The County presented no other evidence on this point, and the Appeals Board cannot presume that Mrs. A.'s presence necessarily precluded Mr. A. from engaging in law enforcement action.

While the Appeals Board recognizes that Mr. A. also received a substantial personal benefit from his ability to use a County vehicle for personal use, the Appeals Board finds that the County received the predominant benefit from his travel. Consequently, Mr. A.'s traffic accident and injury arose out of and in the course of his employment and is compensable under the Utah Workers' Compensation Act.

### **ORDER**

The Appeals Board denies Salt Lake County's motion for review and affirms Judge Lima's decision. It is so ordered.

Dated this 13<sup>th</sup> day of February, 2006.

---

Patricia S. Drawe

---

Thomas Lewis<sup>1</sup>

---

<sup>1</sup> Joseph E. Hatch having recused himself from consideration of this case, Thomas Lewis has been designated to participate as a member of the Appeals Board pursuant to § 34A-1-303(5) of the Utah Labor Commission Act.

## **DISSENT**

I respectfully dissent from the Appeals Board's majority decision. In *VanLeeuwen v. Industrial Commission*, 901 P.2d 281, 284 (Utah App. 1995), the decision turned on which party, the employer or the employee, received the predominant benefit from the travel. In my view, the realities of Mr. A.'s use of his police vehicle for personal errands and commuting to and from work establish that he, rather than the County, received the primary benefit. That he was spared the expense of coming and going to work was a major benefit to him. In contrast, it is difficult to discern any significant benefit that the County was receiving from Mr. A.'s off-duty travel at the time of his accident. This is particularly true in light of the facts that: a) because of the administrative nature of his work, he was not in uniform; b) he was driving an unmarked car, rather than a marked police car; c) he had a civilian (his wife) with him; and d) he was not engaged in any work-related activity, but was driving his wife to her place of employment. Pursuant to § 2-8-02.04(6) of Salt Lake County's written policy governing vehicle use, the presence of Mr. A.'s wife in Mr. A.'s vehicle precluded Mr. A. from responding to any law enforcement situation.

"Travel to and from work is not generally considered to be 'in the course of . . . employment.'" *Soldier Creek Coal Co. v. Bailey*, 709 P. 2d 1165, 1166 (Utah 1985). At the time of his accident, Mr. A. was performing no services for the County. His work responsibilities neither caused nor contributed to the accident. I see no significant difference between his circumstances and the circumstances of thousands of other Utah commuters who, under the coming and going rule, would be denied workers' compensation benefits if they were involved in such an accident.

Because Mr. A. received the predominate benefit from his off-duty use of his patrol vehicle, I would hold that he is subject to the coming and going rule, and that his accident and injuries are not compensable under the workers' compensation system.

---

Colleen S. Colton, Chair